JHARIA MANIYA

v.

STATE OF RAJASTHAN & ANOR.

SUPREME COURT, INDIA
AP SEN J
ES VENKATARAMIAH J
RB MISRA J
[WRIT PETITION (CRIMINAL) NO. 1632 OF 1981]
21 JULY 1983

CONSTITUTIONAL LAW: *Petitioner convicted under ss. 302, 34 of Indian Penal Code - Failure to obtain special leave to appeal - Complaint of infringement of fundamental rights - Whether petition under art. 32 of the Constitution maintainable?*

The Supreme Court cannot issue a writ, direction or order to itself in respect of any judicial proceedings and the learned Judges constituting the Bench are not amenable to the writ jurisdiction of this Court.

[Petition dismissed.]

Cases referred to:
Krishna Govind Patil v. State of Maharashtra [1964] 1 SCR 678
Maina Singh v. State of Rajasthan [1976] 3 SCR 651
Piara Singh v. State of Punjab [1980] 2 SCC 401
Shankar Ramenandra Abhyarkar v. Krishnaji Battatraya Bapai [1976] 1 SCR UC 322

Legislation referred to:
Constitution of India [Ind], arts. 14, 19, 21, 32, 136
Penal Code [Ind], ss. 34, 302

JUDGMENT

AP Sen J:

This petition under Article 32 of the Constitution is clearly not maintainable and must be dismissed but in view of the growing trend of filing such frivolous applications, we deem it necessary to state the reasons therefor.

It appears that the petitioner alongwith two others was arraigned before the Sessions Judge of Alwar in Sessions Trial No. 120 of 1976 for having committed an alleged offence punishable under s. 302 of the Indian Penal code, alternatively, under s. 302 read with s. 34 of the Code. By this finding and sentence dated 21 April 1977 the learned Sessions Judge convicted the petitioner and his two associates for having committed the murder of the deceased Jharia in furtherance of their common intention under s. 302 read with s. 34 and sentenced each of them to undergo imprisonment for life, while recording their acquittal under s. 302. On appeal, a Division Bench of Rajasthan High Court (Jaipur Bench) in Criminal Appeal No. 217 of 1977 by judgment dated 3 July 1980 maintained the conviction of the petitioner under s. 302 read with s. 34 but acquitted his two associates giving them the benefit of doubt. Dissatisfied with the judgment of the High Court, the petitioner applied to this Court for grant of special leave under Article 136 of the Constitution. The special leave petition was dismissed by this Court on 23 February 1981. An application for review was also dismissed on 19 November 1981. Thereafter, the petitioner filed this petition under Article 32 assailing his conviction and sentence. The petitioner

seeks the issuance of a writ of directing the State of Rajasthan to forbear from giving effect to the judgment and sentence passed by the learned Sessions Judge as also the judgment of the High Court as well as the order passed by this Court dismissing the special leave petition. He further seeks a declaration that his conviction under s. 302 read with s. 34 by the High Court was illegal and therefore his detention in jail was without the authority of law and in violation of Article 21 read with Article 14 and 19 of the Constitution.

The petitioner contends that in view of the decisions of this Court reported in *Krishna Govind Patil v. State of Maharashtra* [1964] 1 SCR 678, *Maina Singh v. State of Rajasthan* [1976] 3 SCR 651 and *Piara Singh v. State of Punjab* [1980] 2 SCC 401, his conviction under s. 302 read with s. 34 was illegal as he had been charged with two other named persons who have been acquitted by the High Court and therefore he cannot be convicted of an offence punishable under s. 302 read with s. 34. Upon this basis, the contention is that the petitioner has been deprived of his life and read with Article 14 and 19 of the Constitution. It is represented to us that the contention based upon the decisions of this Court had been advanced during the course of the hearing of the special leave petition, but both the special leave petition and the application for review have been dismissed and therefore the petitioner has no other remedy except to approach this Court for appropriate writ, direction or order under Article 32 of the Constitution.

We fail to appreciate the propriety of asking for a declaration in these proceedings under Article 32 that conviction of the petitioner by the High Court for an offence punishable under s. 302 read with s. 34 of the Indian Penal Code is illegal, particularly when this Court has declined to grant special leave under Article 136. Nor can the petitioner be heard to say that his detention in jail amounts to deprivation of the fundamental right to life and liberty without following the procedure established by law in violation of Article 21 read with Article 14 and 19. When a special leave petition is assigned to the learned Judges sitting in a Bench, they constitute the Supreme Court and there is a finality to their judgment which cannot be upset in these proceedings under Article 32. Obviously, the Supreme Court cannot issue a writ, direction or order to itself in respect of any judicial proceedings and the learned Judges constituting the Bench are not amenable to the writ jurisdiction of this Court.

In *Shankar Ramenandra Abhyarkar v. Krishnaji Battatraya Bapai* [1976] 1 SCR UC 322, this Court laid down that if there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen as exhausted, it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the Subordinate Court. In that case, the respondent had already chosen the remedy under s. 115 of the code of Civil Procedure, 1908, but a learned Single Judge dismissed the revision. Thereupon, the respondent moved the High Court by a petition under Article 226 and 227 of the Constitution challenging the same order of the appellate Court. A division bench of the High Court held that in spite of the dismissal of the revision petition, it could interfere under Article 226 and 227 on a proper case being made out, and after going into the merits of the case, it granted relief to the respondent. On appeal to this Court, the contention was that the High Court could not have interfered under Article 226 and 227. That contention of the appellant prevailed and the judgment of the Division Bench of the High Court was set aside. It was observed:

> The refusal to grant relief in such circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord finality to its own decisions.

There is no reason why the same principle should not equally apply to proceedings under Article 32 of the Constitution which are initiated after the Court has declined to interfere under Article 136.

For these reasons, the writ petition fails and is dismissed.

Also found at [1983] 2 CLJ 284